

REMARKS

In an Office Action dated June 16, 2005, the Examiner rejects claims 1-37 (all pending claims). In response to the Office Action, Applicant cancels claims 1-37, adds claims 38-67 and respectfully traverses the rejections. Claims 38-67 remain in the application. In light of the newly added claims and following arguments, Applicant respectfully requests that this application be allowed.

Applicant has cancelled all pending claims and replaced the claims with new claims which better describe the invention. In particular, the newly added claims recite inserting a candidate call into a ring queue responsive to a determination that ringing the call exceeds a predetermined power limit and ringing the candidate call from the ring queue responsive to power being available to ring the telephone. Thus, the examiner's rejection of claims 1, 11, 20, and 28 are moot. However, the Examiner's rejections of claims 2, 12, 21 and 28 will be addressed as these claims recite a queue.

In the Office Action, the Examiner rejects claims 2, 12, 21, and 29 under §35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 5,367,567 issued to Sugawara (Sugawara) in view of U.S. Patent number 4,907,256 issued to Higuchi et al. (Higuchi). In order to maintain a rejection the Examiner has the burden of providing evidence of prima facie obviousness. See MPEP §2143. See also In Re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In order to prove prima facie obviousness, the Examiner must provide evidence in the prior art of a motivation to combine or modify a reference, a reasonable expectation of success, and a teaching of each and every claimed element. *Id.*

Claim 38 recites inserting a candidate call into a ring queue responsive to a determination that ringing the telephone receiving the candidate call exceeds a predetermined power limit. Sugawara does not teach this limitation. The Examiner admits this fact in the fourth paragraph of page three of the present Office Action. Instead of teaching queuing, Sugawara teaches that when the capacity of a ring generator is exceeded, ringer signals are sent to the receiving telephone by a stand-by ring generator. See Col. 4, lines 26-30. Sugawara deals with a system where there is not a limited power supply and the solution to exceeding a capacity of a ring generator may be solved by using an extra ring generator. The present invention presents a solution where there is a limited power supply and another ring generator cannot be added because of power concerns. Thus, the invention in claim 1 does not ring calls if the power is exceeded. There is no mention anywhere in Sugawara of queuing candidate calls when power is exceeded. Thus, Sugawara does not teach the queuing recited in claim 1.

Higuchi also does not teach the queuing recited in claim 38. Instead, Higuchi teaches an embodiment of a system in which incoming and outgoing calls are placed in a Last In First Out (LIFO) queue until exchange resources are available for connecting the calls. See Col 16, line 64- col. 20, line 2. In Higuchi, all calls are placed in the LIFO and are released from the LIFO when the resources needed to make the connection are available. In the recited limitation, only candidate or incoming calls are placed in the queue and only when the power limit is exceeded by ringing the call. Thus, the queuing recited in claim 38 is not taught in Higuchi.

Since neither Sugawara nor Higuchi teaches the queuing recited in claim 38, the combination cannot teach the queuing recited in claim 38. Therefore, Applicant respectfully requests that this rejection not be applied to claim 38.

Furthermore, even if the combination does teach the limitations of claim 38, the Examiner has not provided evidence of a reason to combine the references. In the Office Action, the Examiner merely asserts that “It would have been obvious to one of ordinary skill in the art to have incorporated such queuing means as taught by Higuchi et al. into Sugawara method and device in order not to lose calls or overpower the exchange.” This is a mere assertion and does not provide evidence in the prior art to support this assertion as required by the MPEP and case law. See MPEP §2143.01 and In re Mills, 916 F2d 680 (Fed. Cir. 1990). The fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness. See Ex Parte Levengood, 28 USPQ2d (Bd. Pat. App. & Inter. 1993). If the Examiner is relying on common knowledge in the art, Applicants challenge this assertion and require that Examiner provide evidence of this as required by §2144.03 of the MPEP. Thus, Applicant respectfully requests that this rejection not be applied to claim 38 and claim 38 be allowed.

Claims 39-47 are dependent upon claim 38. Thus, since claim 38 is allowable, claims 39-47 are allowable. Therefore, Applicant respectfully requests that claims 39-47 be allowed.

Claim 48 claims the instructions executable by a processing system for performing the method of claim 38. Therefore claim 48 is allowable for at least the same reasons as claim 38. Therefore, Applicant respectfully requests claim 48 be allowed.

Since claim 48 is allowable, claims 49-57 are allowable as being dependent upon an allowable independent claim. Thus, Applicant respectfully requests claims 49-57 be allowed.

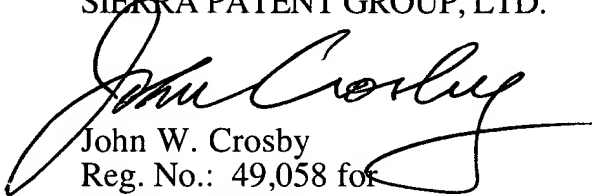
Claim 58 claims an apparatus for performing the method of claim 38. Therefore, claim 58 is allowable for at least the same reasons as claim 38. Therefore, Applicant respectfully requests claim 58 be allowed.

Since claim 58 is allowable, claims 59-67 are allowable as being dependent upon an allowable independent claim. Thus, Applicant respectfully requests claims 59-67 be allowed.

If the Examiner has any questions regarding this response or the application in general, the Examiner is invited to telephone the undersigned at 775-586-9500.

Respectfully submitted,
SIERRA PATENT GROUP, LTD.

Dated: September 14, 2005



John W. Crosby
Reg. No.: 49,058 for
William P. Wilbar
Reg. No.: 43,265

Sierra Patent Group, Ltd.
P.O. Box 6149
Stateline, NV 89449
(775) 586-9500
(775) 586-9550 Fax